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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
PHOENIX DIVISION

Steve Webb, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

Circle K Stores, Inc.,

Defendant.

Case No.

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT, 47 U.S.C. §§ 227, ET SEQ.
(TCPA)**

JURY TRIAL DEMANDED

1 **CLASS ACTION COMPLAINT**

2 1. Plaintiff, Steve Webb, brings this action against Defendant, Circle K
3 Stores, Inc., to secure redress for violations of the Telephone Consumer Protection Act
4 (“TCPA”), 47 U.S.C. § 227.

5 **NATURE OF THE ACTION**

6 2. This is a putative class action pursuant to the Telephone Consumer
7 Protection Act, 47 U.S.C. §§ 227, *et seq.* (the “TCPA”).

8 3. Defendant is an international chain of convenience stores with over
9 15,000 locations. To promote its services, Defendant engages in aggressive unsolicited
10 marketing, harming thousands of consumers in the process.

11 4. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s
12 illegal conduct, which has resulted in the invasion of privacy, harassment, aggravation,
13 and disruption of the daily life of thousands of individuals. Plaintiff also seeks statutory
14 damages on behalf of himself and members of the Class, and any other available legal
15 or equitable remedies.

16 **JURISDICTION AND VENUE**

17 5. This Court has federal question subject matter jurisdiction over this action
18 pursuant to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer
19 Protection Act, 47 U.S.C. §§ 227, *et seq.* (“TCPA”).

20 6. The Court has personal jurisdiction over Defendant and venue is proper
21 in this District because Defendant directs, markets, and provides its business activities
22 to this District, and because Defendant resides within this judicial district.

23 **PARTIES**

24 7. Plaintiff is a natural person who, at all times relevant to this action, was a
25 resident of Baker County, Florida.

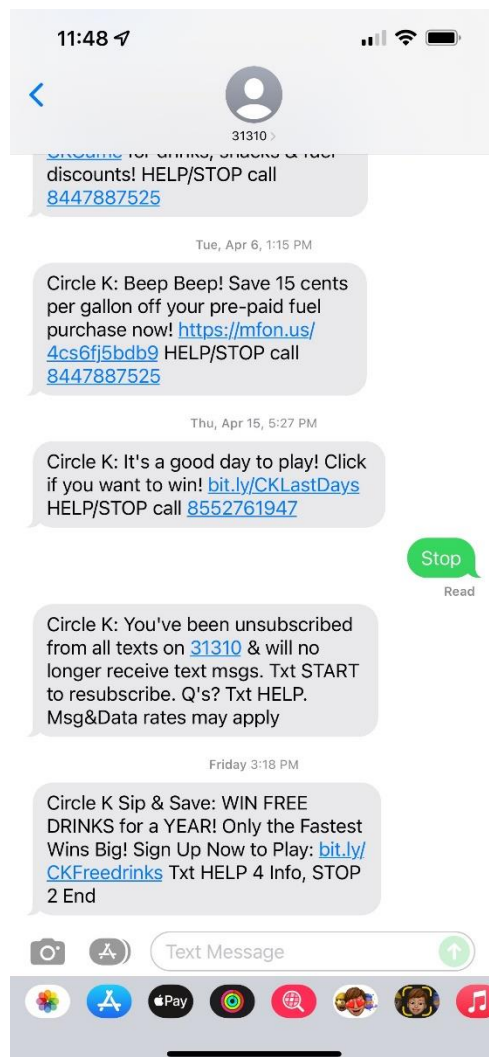
26 8. Defendant is a Texas corporation whose principal office is located at 1130
27 W Warner RD, Building B, Tempe, Arizona 85284. Defendant directs, markets, and
28

provides its business activities throughout the United States, including throughout the state of Arizona.

9. Unless otherwise indicated, the use of Defendant's name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, vendors, and insurers of Defendant.

FACTUAL ALLEGATIONS

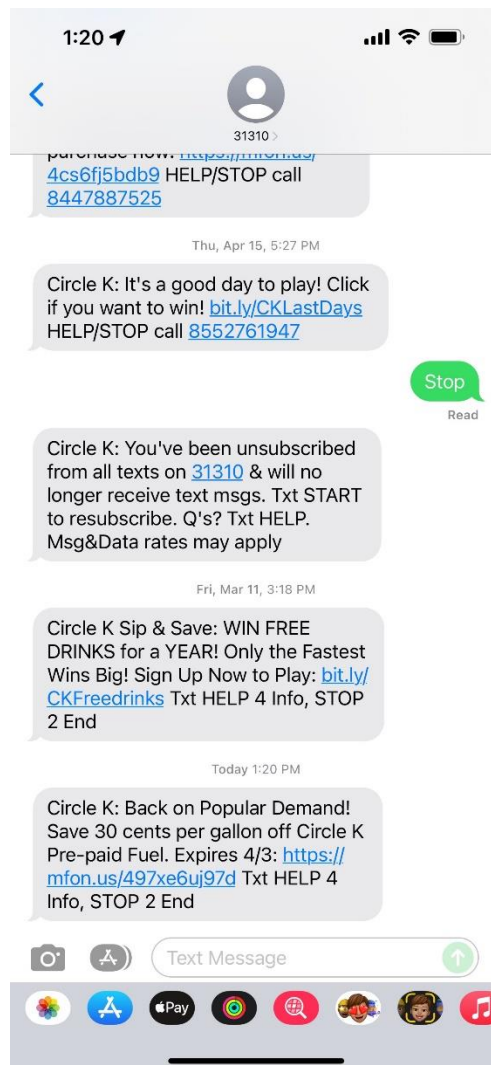
10. Beginning in February of 2021, Defendant began sending telemarketing text message to Plaintiff's cellular telephone number ending in 8897 (the "8897 Number") including but not limited to the below:



11. April 15, 2021, Plaintiff responded with the word “Stop” in an attempt to opt-out of any further text message communications with Defendant.

12. Immediately after Plaintiff sent his stop request, Defendant, within seconds, responded with an automated opt-out confirmation text confirming that Plaintiff had opted out of future communications: “Circle K: You’ve been unsubscribed from all texts on 31310 & will no longer receive text msgs.”

13. Despite Plaintiff’s use of clear opt-out language and Defendant’s subsequent opt-out confirmation, Defendant ignored Plaintiff’s opt-out demand and sent Plaintiff another telemarketing text message on or about March 11, 2022 and another date in March 2022:



25. The text messages originated from telephone number 31310, a number which upon information and belief is owned and operated by Defendant or on behalf of Defendant.

26. Defendant's unsolicited text messages caused Plaintiff actual harm, including invasion of his privacy, aggravation, annoyance, intrusion on seclusion, trespass, and conversion. Defendant's text messages also inconvenienced Plaintiff and caused disruption to his daily life.

27. Defendant's unsolicited text messages caused Plaintiff actual harm. Specifically, Plaintiff estimates that he has wasted fifteen to thirty seconds reviewing each of Defendant's unwanted messages. Each time, Plaintiff had to stop what he was doing to either retrieve his phone and/or look down at the phone to review the message.

28. Next, Plaintiff wasted approximately fifteen minutes locating and retaining counsel for this case in order to stop Defendant's unwanted calls. In all, Defendant's violations of the TCPA caused Plaintiff to waste at least fifteen minutes of his time in addressing and attempting to stop Defendant's solicitations.

CLASS ALLEGATIONS

PROPOSED CLASS

29. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23, on behalf of himself and all others similarly situated.

30. Plaintiff brings this case on behalf of the Class defined as follows:

Internal Do Not Call Class: All persons within the United States who, within the four years prior to the filing of this Complaint, were sent a text message from Defendant or anyone on Defendant's behalf, to said person's cellular telephone number *after* making a request to Defendant to not receive future text messages.

Seller Identification Class: All persons within the United States who, within the four years prior to the filing of this Complaint through the date of class

certification, (1) received two or more text messages within any 12-month period, (2) regarding Defendant's property, goods, and/or services, (3) to said person's residential telephone number, (4) that did not disclose the name of the individual caller, the name of the person or entity on whose behalf the call is being made, or a telephone number or address at which the person or entity may be contacted.

31. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class but believes the Class members number in the several thousands, if not more.

NUMEROSITY

32. Upon information and belief, Defendant has placed telemarketing calls to cellular telephone numbers belonging to thousands of consumers throughout the United States who had already requested to be opted out of further communications and without including important seller identification information in the messages. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

33. The exact number and identities of the members of the Class are unknown at this time and can only be ascertained through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant's call records.

COMMON QUESTIONS OF LAW AND FACT

34. There are numerous questions of law and fact common to members of the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the members of the Class are:

- a) Whether Defendant violated 47 C.F.R. § 64.1200(d);
- b) Whether Defendant adhered to requests by class members to stop sending text messages to their telephone numbers;
- c) Whether Defendant keeps records of text recipients who revoked

consent to receive texts;

d) Whether Defendant has any written policies for maintaining an internal do not call list;

e) Whether Defendant's conduct was knowing and willful;

f) Whether Defendant violated the privacy rights of Plaintiff and members of the class;

g) Whether Defendant is liable for damages, and the amount of such damages; and

h) Whether Defendant should be enjoined from such conduct in the future.

35. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits text messages to telephone numbers assigned to cellular telephone services is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

36. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

37. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class, and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE

38. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While

the aggregate damages sustained by the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

39. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

COUNT I
Violations of the TCPA, 47 U.S.C. § 227(c)(2)
(On Behalf of Plaintiff and the Internal Do Not Call Class)

40. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

41. The TCPA provides that any "person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may" bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c)(5).

42. Under 47 C.F.R. § 64.1200(d), "[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet certain minimum standards, including:

(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

47 C.F.R. § 64.1200(d)(3), (6).

43. Under 47 C.F.R § 64.1200(e) the rules set forth in 47 C.F.R. § 64.1200(d) are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers:

(e) The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02-278, FCC 03-153, "Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.

47 C.F.R. § 64.1200(e).

44. Plaintiff and the Internal Do Not Call Class members made requests to Defendant not to receive calls from Defendant.

45. Defendant failed to honor Plaintiff and the Internal Do Not Call Class members' requests.

46. Upon information and belief, Defendant has not instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of their behalf, pursuant to 47 C.F.R. § 64.1200(d).

47. Because Plaintiff and the Internal Do Not Call Class members received more than one text message in a 12-month period made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200(d), as described above, Defendant violated 47 U.S.C. § 227(c)(5).

48. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), Plaintiff and the Internal Do Not Call Class members are entitled to an award of \$500.00 in statutory damages, for each and every negligent violation, pursuant to 47 U.S.C. § 227(c)(5).

49. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), Plaintiff and the Internal Do Not Call Class members are entitled to an award of \$1,500.00 in statutory damages, for each and every knowing and/or willful violation, pursuant to 47 U.S.C. § 227(c)(5).

50. Plaintiff and the Internal Do Not Call Class members also suffered damages in the form of invasion of privacy.

51. Plaintiff and the Internal Do Not Call Class members are also entitled to and seek injunctive relief prohibiting Defendant's illegal conduct in the future, pursuant to 47 U.S.C. § 227(c)(5).

COUNT II

Violation of 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200(d) **(Individually and on behalf of the Seller Identification Class)**

52. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

53. Under 47 C.F.R. § 64.1200(d), "[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to

1 receive telemarketing calls made by or on behalf of that person or entity. The
2 procedures instituted must meet certain minimum standards, including:

3
4 (4) **Identification of sellers and telemarketers.** A person or entity
5 making a call for telemarketing purposes must provide the called party
6 with the name of the individual caller, the name of the person or entity on
7 whose behalf the call is being made, and a telephone number or address
8 at which the person or entity may be contacted.

9 47 C.F.R. § 64.1200(d)(4).

10 54. Under 47 C.F.R § 64.1200(e) the rules set forth in 47 C.F.R. § 64.1200(d)
11 are applicable to any person or entity making telephone solicitations or telemarketing
12 calls to wireless telephone numbers:

13 (e) The rules set forth in paragraph (c) and (d) of this section are applicable
14 to any person or entity making telephone solicitations or telemarketing
15 calls to wireless telephone numbers to the extent described in the
16 Commission's Report and Order, CG Docket No. 02-278, FCC 03-153,
17 "Rules and Regulations Implementing the Telephone Consumer
18 Protection Act of 1991.

19 47 C.F.R. § 64.1200(e).

20 55. Pursuant to 47 C.F.R. § 64.1200(d)(4), Defendant's contact of Plaintiff's
21 cellular phone without disclosing the name of the individual caller constitutes a violation
22 of 47 U.S.C. § 227(c).

23 56. Pursuant to 47 C.F.R. § 64.1200(d)(4), Defendant's contact of Plaintiff's
24 cellular phone without disclosing the name of the entity on whose behalf the call is
25 being made constitutes a violation of 47 U.S.C. § 227(c).

26 57. As a result of Defendant's violations of 47 U.S.C. § 227(c) Plaintiff and
27 the Seller Identification Class members are entitled to an award of \$500.00 in statutory
28 damages, for each and every negligent violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

58. As a result of Defendant's violations of 47 U.S.C. § 227(c), Plaintiff and the Seller Identification Class members are entitled to an award of \$1,500.00 in statutory damages, for each and every knowing and/or willful violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

59. Plaintiff and the Seller Identification Class members are also entitled to and seek injunctive relief prohibiting Defendant's illegal conduct in the future, pursuant to 47 U.S.C. § 227(c)(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Class as defined above, and appointing Plaintiff as the representative of the Class and Plaintiff's counsel as Class Counsel;
- b) An award of actual and statutory damages for Plaintiff and each member of the Class;
- c) As a result of Defendant's negligent violations of 47 U.S.C. §§ 227, *et seq.*, Plaintiff seeks for himself and each member of the Class \$500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 277(b)(3)(B);
- d) As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §§ 227, *et seq.*, Plaintiff seeks for himself and each member of the Class treble damages, as provided by statute, up to \$1,500.00 for each and every violation pursuant to 47 U.S.C. § 277(b)(3)(B) and § 277(b)(3)(C);
- e) An order declaring that Defendant's actions, as set out above, violate the TCPA;
- f) An award of reasonable attorneys' fees and costs pursuant to, *inter alia*, California Code of Civil Procedure § 1021.5; and

g) Such further and other relief as the Court deems necessary.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

DOCUMENT PRESERVATION DEMAND

Plaintiff demands that Defendant take affirmative steps to preserve all records, lists, electronic databases or other itemizations associated with the allegations herein, including all records, lists, electronic databases or other itemizations in the possession of any vendors, individuals, and/or companies contracted, hired, or directed by Defendant to assist in sending the alleged communications.

Dated: April 28, 2022

Respectfully submitted,

By: /s/ Andrew Shamis

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